

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Footprint Power Salem Harbor
Development LP

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Docket No. ER15-60-000

NOTICE OF INTERVENTION AND COMMENTS OF THE
MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES

Pursuant to Rule 214(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.214(a)(2), and the Commission’s October 8, 2014 Combined Notice of Filings #1, the Department of Public Utilities of the Commonwealth of Massachusetts (“MA DPU”) hereby files its Notice of Intervention and provides comments in the above-captioned matter. This proceeding relates to the filing made on October 7, 2014 (“Application”), by Footprint Power Salem Harbor Development LP (“Footprint”) requesting that the Commission grant a one-year deferral of its Capacity Supply Obligation (“CSO”) pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, and Section III.13.3.7 of the ISO-NE Tariff¹.

I. COMMUNICATIONS

The MA DPU requests that the individuals identified below be placed on the Commission’s official service list in this proceeding and that all communications related to this filing and future filings in this proceeding should be directed to:

¹ Capitalized terms not defined in this filing are intended to have the meaning given to such terms in the ISO-NE Transmission, Markets and Services Tariff (the “Tariff”).

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II. INTERVENTION

The MA DPU is the agency of the Commonwealth of Massachusetts charged with general regulatory supervision over gas and electric companies in Massachusetts and has jurisdiction to regulate rates or charges for the sale of electric energy and natural gas to consumers.² Therefore, the MA DPU is a “state commission” as defined by 16 U.S.C. § 796(15) and 18 C.F.R. § 1.101(k). This notice of intervention has been filed within the period established under Rule 210(b). Accordingly, the MA DPU hereby intervenes in this proceeding pursuant to Rule 214(a)(2).

III. BACKGROUND

Under the Section III.13.3.7 of the ISO-NE Tariff, a new capacity resource can seek a one-year deferral of its CSO in a limited set of circumstances. First, ISO-NE has to determine that the resource is needed for reliability. If ISO-NE determines that it is, then the new capacity resource may file with the Commission seeking a deferral. In the filing, the new capacity resource has to demonstrate that the deferral is critical to its ability to become commercial and that the reasons the deferral is being sought were beyond the control of the new capacity resource.

² Massachusetts General Laws c. 164, § 76 et seq.

If the Commission grants the deferral, all of the rights, obligations, payments, and charges associated with the CSO will be delayed one year. If a resource elected to lock in its Forward Capacity Auction (“FCA”) clearing price for multiple years, then it will still receive the clearing price for the number of years for which it had originally locked in the price.

IV. COMMENTS

The MA DPU supports Footprint’s CSO deferral application and urges the Commission to grant Footprint the deferral. The MA DPU supported ISO-NE’s proposal to change its tariff to allow for deferral requests precisely for situations like Footprint’s, where a resource is needed for reliability and yet, through no fault of its own, it is unable to achieve Commercial Operation in time to meet the first year of its CSO without a deferral. Footprint demonstrates in its Application that it meets all three criteria and, thus, should be granted the deferral.

First, ISO-NE has officially determined that the Footprint resource³ is needed for reliability for the first year of its CSO and the following year, as required.⁴ While Footprint has undeniably satisfied this first criterion, the MA DPU is particularly concerned about the viability of Footprint because of its impact on the Northeast Massachusetts/Boston Capacity Zone (“NEMA/Boston”).⁵ According to ISO-NE’s filing requesting the Tariff rule change to

³ Footprint has a 692 MW quick-start, combined cycle gas-fired generation facility. Footprint received a CSO for 674 MW in the seventh FCA (“FCA 7”) for the 2016-2017 Capacity Commitment Period. However, with duct-burner firing in the summer, the plant would be capable of producing 692 MW.

⁴ Application at 2.

⁵ In the FCA 7, ISO-NE determined that the Local Sourcing Requirement (“LSR”) for NEMA/Boston was 3,209 MW. Forward Capacity Market (FCA 7) Result Report, issued February 6, 2013, available at: http://www.iso-ne.com/markets/othrmkts_data/fcm/cal_results/ccp17/fca17/fca_7_result_report.pdf (“FCA 7 Results Report”) at 5. FCA 7 procured 3,753 MW for NEMA/Boston, of which 674 MW represent the CSO for Footprint. Without the capacity to be supplied by Footprint, NEMA/Boston will be deficient by 130 MW for the 2016-2017 Capacity

allow for the deferral (“Rule Change Filing”), it is unlikely that there are any substitute resources available to cover Footprint’s CSO in NEMA/Boston.⁶ ISO-NE asserted that any other resources acquired in future FCAs or transmission enhancements would become commercial much later than a new capacity resource that has cleared in a prior FCA even if a one-year deferral is granted.⁷ By contrast, Footprint is well along in the development and permitting process and, therefore, from a reliability standpoint, Footprint is the best resource to address the reliability need at this time. ISO-NE stated in its Rule Change Filing that it prefers to ensure that a new capacity resource with a CSO can become commercial as soon as possible rather than trying to find another resource through an alternative mechanism to fill the reliability need that will not be available until a later date.⁸ The MA DPU agrees that for the sake of reliability it makes more sense to grant Footprint the deferral, especially because Footprint can satisfy the other two criteria for a deferral, instead of looking for another resource.

Second, Footprint has asserted that the deferral is necessary for it to become commercial and the MA DPU is persuaded by its argument. It is understandable that the

Commitment Period. *See* FCA 7 Results Report at 5 (this number is calculated by subtracting the number of MW for the Footprint CSO from the amount of MW that cleared in FCA 7 and then subtracting the LSR). Without Footprint’s CSO in the subsequent Capacity Commitment Period, NEMA/Boston will be deficient by 282 MW. Forward Capacity Market (FCA 8) Result Report, issued February 5, 2014, available at: http://www.iso-ne.com/markets/othrmkts_data/fcm/cal_results/ccp18/fca18/fca_8_result_report.pdf (this number is calculated by subtracting the number of MW for the Footprint CSO from the amount of MW that cleared in FCA 8 and then subtracting the LSR).

⁶ ISO New England Inc., Revisions to Allow a Non-Commercial Capacity Resource to Seek a One-Year Deferral, Docket No. ER14-2440-000 (filed July 16, 2014) (“Rule Change Filing”) at 5.

⁷ Rule Change Filing at 4.

⁸ Rule Change Filing at 4, 6.

deferral is necessary because without the deferral Footprint would have to forgo a year of its capacity payments. Before Footprint secured its CSO through the FCA, Footprint elected to lock in its Capacity Clearing Price for that CSO for a total of five years as part of its bid. A bid is a reflection of the monies a resource has determined it needs to be competitive in the market and to be commercial in practice. The MA DPU understands that, as a merchant generator in the Forward Capacity Market, Footprint was relying on the financial certainty represented by the capacity payments as a revenue stream to attract investment necessary for construction. The MA DPU accepts that the deferral is necessary for Footprint to become commercial and respectfully asks the Commission to do so as well.

Lastly, Footprint is seeking the deferral because of delays in the permitting process that prevented it from being able to obtain financing. The permitting and siting history for Footprint, which it recounts in detail in its Application, clearly illustrates how a proposed generation facility whose proponents have worked diligently and successfully to obtain necessary regulatory approvals can face unforeseen delays beyond their control stemming from the numerous opportunities for appeal of local, state, and federal permits and approvals. ISO-NE has observed that in some circumstances the 39-month planning period may not be sufficient for a new capacity resource to become commercial.⁹ The MA DPU agrees that under the current rules there are cases, like Footprint's, in which the planning period is not sufficient for reasons beyond the control of a new capacity resource, such as permitting delays and appeals.

⁹ Rule Change Filing at 1.

Over the past two-and-one-half years, Footprint has made timely progress on many fronts in permitting and developing its facility. Footprint, however, has encountered delays despite: beginning development and pre-permitting work well before it acquired the Salem Harbor Station site; actively reaching out to the relatively small number of individuals in the Salem community who were either skeptical about the proposal or opposed its development; and successfully negotiating a settlement agreement with the Conservation Law Foundation, which resulted in the withdrawal of an appeal. The final delay resulted from an appeal brought by four individual Salem residents that stayed Footprint from beginning construction of the facility under federal law. The appeal also had the effect of delaying the completion of the project's financing because project financing typically depends on the resolution of significant regulatory and permit issues. The appeal was resolved in favor of Footprint in September. Absent the various appeals, which have proven to be without merit, Footprint would still arguably be on track to meet its development schedule and CSO commitment of a June 1, 2016 in-service date. Unfortunately, and due to no fault of Footprint, this in-service date is no longer viable and a deferral is necessary for the project to be completed.

V. CONCLUSION

WHEREFORE, for the foregoing reasons, the MA DPU hereby files this Notice of Intervention and respectfully requests that the Commission recognize the MA DPU as an intervener in this proceeding, with all rights attendant thereto. In addition, for the reasons stated above, the MA DPU respectfully requests that the Commission consider our comments and approve Footprint's CSO deferral application.

Respectfully submitted,
MASSACHUSETTS DEPARTMENT OF
PUBLIC UTILITIES

By its attorney,

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Date: October 28, 2014

CERTIFICATE OF SERVICE

In accordance with 18 C.F.R. § 385.2010 (2008), I hereby certify that I have this day served, via electronic mail or first class mail, the foregoing document upon each person designated on the official service list compiled by the Secretary in these proceedings.

Dated at Boston, Massachusetts on this 28th day of October, 2014.

/s/ Jennifer M. Murphy
Jennifer M. Murphy